

STATE OF MICHIGAN
IN THE SUPREME COURT

HEATHER LYNN HANNAY,

Plaintiff-Appellee,

v.

MICHIGAN DEPARTMENT OF
TRANSPORTATION

Defendant-Appellant

Supreme Court No.: 146763

Court of Appeals No.: 307616

Court of Claims No. 09-116 MZ(A)

BRIEF OF AMICUS CURIAE INSURANCE INSTITUTE OF MICHIGAN

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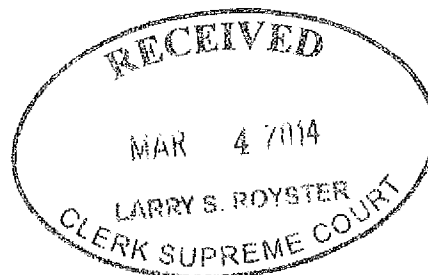


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STATEMENT OF APPELLATE JURISDICTION

On January 17, 2013, the Court of Appeals issued a published opinion affirming the Court of Claims' judgment following a bench trial. This Court issued an order on September 27, 2013, granting the application for leave to appeal. In that order, this Court also invited the Insurance Institute of Michigan (among other organizations) to file briefs amicus curiae. Therefore, jurisdiction in this Court is proper under MCR 7.301(A)(2) and MCR 7.302(H)(3).

STATEMENT OF QUESTION PRESENTED

Whether economic loss in the form of wage loss qualifies as bodily injury under MCL 691.1405, the motor vehicle exception to governmental immunity?

Defendant-Appellant answers “no.”

Plaintiff-Appellee answers “yes.”

The Court of Appeals answered “yes.”

The Court of Claims answered “yes.”

Amicus Curiae Insurance Institute of Michigan answers “no.”

**STATEMENT IDENTIFYING THE JUDGMENT APPEALED FROM AND THE
REQUESTED RELIEF**

On January 17, 2013, the Court of Appeals issued a published opinion affirming the Court of Claims' judgment following a bench trial and held that an award of economic damages in the form of wage loss was appropriate under MCL 691.1405. On September 27, 2013, this Court granted the Defendant's application for leave to appeal. The Insurance Institute of Michigan files this amicus curiae brief because the Court of Appeals materially erred in broadening the plain language of the motor vehicle exception to governmental immunity which specifically restricts liability of governmental agencies to only bodily injury and property damage. As such, the Insurance Institute of Michigan requests this Court reverse the judgment of the Court of Appeals.

STATEMENT OF INTEREST

The Insurance Institute of Michigan represents over (90) property/casualty insurance companies and related organizations operating in Michigan. Its member companies provide insurance to approximately 75% of the automobile market in Michigan and are interested in the ongoing development of automobile no-fault and liability insurance in Michigan. The Insurance Institute of Michigan was invited by this Court to file a brief amicus curiae in this matter and it takes an interest in the case because it involves issues of inappropriate expansive statutory interpretation which could impact both the insurance industry and the state's consumers of mandatory automobile insurance and, accordingly, to the Amicus Curiae Insurance Institute of Michigan.

STATEMENT OF FACTS

Amicus Curiae Insurance Institute of Michigan relies upon the Statement of Facts submitted in Defendant-Appellant's Brief on Appeal.

ARGUMENT

ECONOMIC LOSS IN THE FORM OF WAGE LOSS DOES NOT QUALIFY AS BODILY INJURY UNDER MCL 691.1405¹

The Governmental Tort Immunity Act and the Motor Vehicle Exception

The Governmental Tort Liability Act (GTLA), MCL 691.1401, *et seq.*, provides broad immunity to governmental agencies when engaged in the discharge of a governmental function. *Robinson v City of Detroit*, 462 Mich 439, 455; 613 NW2d 307 (2002). This Court has observed that a central purpose of governmental immunity is to prevent a drain on the State's financial resources, by avoiding the expense of having to contest the merits of any claim barred by governmental immunity. *Mack v City of Detroit*, 467 Mich 186; 649 NW2d 47 (2002). This broad immunity is subject to six narrowly drawn statutory exceptions, one of which is the motor vehicle exception at issue in this case. It provides as follows:

Governmental agencies shall be **liable for bodily injury and property damage** resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, beginning sections 257.1 to 257.923 of the Compiled Laws of 1948.

MCL 691.1405 (emphasis added).

General Principles of Statutory Interpretation

It is axiomatic that the Court's primary purpose in interpreting a statute is to ascertain and effectuate legislative intent. *Michigan Educ Assoc v Secretary of State*, 489 Mich 194, 217; 801 NW2d 35 (2011). This task begins by examining the language of the statute since the actual

¹ The Insurance Institute of Michigan urges this Court to limit its opinion in this case solely to the language and statutory interpretation of the motor vehicle exception to governmental immunity and cautions against any opinion that may result in an unintended expansion into the overall No-Fault Act.

words of the statute provide the most reliable evidence of that intent. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999)(citation omitted). The words used by the legislature are given their common and ordinary meaning. Despite the implication by the Plaintiff that this Court's use of dictionary definitions to consider the meaning of an undefined term is an unsophisticated approach, it is indeed both appropriate and effectual. *Horace v City of Pontiac*, 456 Mich 744; 757 NW2d 762 (1998). If the statutory language is unambiguous, it is presumed that the legislature intended the meaning that it clearly expressed, and further construction is neither required nor permitted. *Joseph v Auto Club Ins Assoc*, 491 Mich 200, 206; 815 NW2d 412 (2002).

Application of this Court's Long-Standing Approach to Statutory Interpretation to MCL 691.1405

This Court has made it abundantly clear that the grant of immunity under the GTLA is broad and that the statutory exceptions to governmental immunity must be narrowly construed. *Robinson v City of Detroit*, 462 Mich 439, 455; 613 NW2d 307 (2002). That said, the Plaintiff is correct in that "narrow" construction is unnecessary in this case, but the bases for her argument in that regard are flawed. The fact of the matter is, as this Court found in *Wesche v Mecosta County Rd Comm*, 480 Mich 75; 746 NW2d 847 (2008), the language of the statute is clear and unambiguous so quite simply no further interpretation is required.

Under the plain language of the statute, liability is imposed solely for "bodily injury" and "property damage." Thus, as stated in *Wesche*, the waiver of immunity in cases involving the negligent operation of a motor vehicle by a governmental agent is clearly and unequivocally limited specifically to two areas: bodily injury and property damage. "Bodily injury" is not defined in the motor vehicle exception and could be considered a term of art that has acquired a unique legal meaning in Michigan's jurisprudence. *Paprocki v Jackson County Clerk*, 142 Mich

App 785, 791; 371 NW2d 450 (1985). Again, when considering the meaning of a non-legal word or phrase that is not defined in a statute, resorting to a lay dictionary is indeed appropriate. *Horace, supra*. The word "bodily" means "of or pertaining to the body" or "corporal or material, as contrasted with spiritual or mental." *Random House Webster's College Dictionary* (2002). The word "injury" refers to "harm or damage done or sustained, especially bodily harm." *Id.* Black's Law Dictionary (7th ed. at 789) defines "bodily injury" as "[p]hysical damage to a person's body."

Furthermore, the differences among claims for bodily injury, personal injury and emotional/psychological injuries have been demonstrated through criminal and insurance coverage cases. In criminal cases, the courts have defined "bodily injury" to mean physical damage to a person's body. *People v Cathey*, 261 Mich App 506, 514; 681 NW2d 661 (2004). In insurance cases, the courts have long interpreted "bodily injury" to exclude mental suffering unless there is an actual physical manifestation of the mental suffering – i.e. physical injury, and have reasoned that bodily injury requires "actual physical harm or damage to a human body," and excludes "nonphysical injuries," such as humiliation and mental anguish, because they lack any physical manifestations from bodily injury. See, e.g., *State Farm Fire & Cas Co v Basham*, 206 Mich App 240, 243; 520 NW2d 713 (1994)(citations omitted).

Consistent with those interpretations, the plain, unambiguous language in the statute, and the dictionary meanings of "bodily injury," this Court in *Wesche, supra* held that loss of consortium was not "bodily injury" because it was a non-physical injury. Therefore, the motor vehicle exception did not apply. Plaintiff contends that this Court's interpretation of "bodily injury" in *Wesche* needs to be re-examined and interpreted so as to disregard the plain language of the statute and the dictionary definition of "bodily injury." Plaintiff turns to the other statutory

exceptions to governmental immunity to argue that the term "bodily injury" means more than injury or harm to a person's body and includes other elements of recoverable damages. However, the plain language of the statute is clear and unambiguous as written. Thus, any further construction by this Court is neither necessary nor permitted.

Similarly, no analysis involving MCL 500.3135(3) is required by this Court because that statute is not at issue in this case and the GTLA itself specifically provides, in pertinent part, **"[e]xcept as otherwise provided in this act,** a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1)(emphasis added).

This Court has repeatedly recognized that the legislature is perfectly capable of crafting statutory language which establishes and specifically delineates categories of compensable damages when it chooses to do so. With the motor vehicle exception to governmental immunity, the legislature restricted liability to simply "bodily injury" and "property damage." Had it intended for the exception to apply to economic loss, any and all damages "as a consequence of" bodily injury or, as the Court of Appeals incorrectly held "arising from the bodily injury," it would have expressly drafted the language accordingly.

The Insurance Institute of Michigan urges this Court to adhere to its longstanding and effectual approach of strict statutory construction, giving faithful effect to the statute. The plain language of MCL 691.1405 is clear and unambiguous. No further interpretation is warranted. The statute provides for liability for "bodily injury" and "property damage" only. It does not provide for liability for economic loss in the form of wage loss and there is no textual basis to support otherwise. As such, the opinion of the Court of Appeals should be reversed.

RELIEF REQUESTED

WHEREFORE, Amicus Curiae Insurance Institute of Michigan respectfully requests that this Honorable Court reverse the opinion of the Court of Appeals in this case, and grant any other relief as it deems proper.

Respectfully submitted,

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